IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

SARAH ANN LOSAPIO, Individually and on behalf of a class of all others similarly situated, Plaintiffs, v. COMCAST CORPORATION, COMCAST CABLE COMMUNICATIONS, LLC, COMCAST CABLE COMMUNICATIONS HOLDING, INC., COMCAST CABLE HOLDINGS, LLC; and COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, Defendants.	)	Case No. _______________ NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1441 and 1446 (Federal Question and Diversity)

DEFENDANTS' NOTICE OF REMOVAL

Defendants, Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Communications Holding, Inc., Comcast Cable Holdings, LLC, and Comcast Cable Communications Management, LLC (collectively, "Defendants" or "Comcast"), pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441, 1446, and 1453, hereby give notice of removal of the above-captioned action from the Superior Court of Fulton County, State of Georgia, Case No. 2010CV191107, to the United States District Court for the Northern District of Georgia.[1] In support of its Notice of Removal, Comcast states as follows:

I. BACKGROUND

1. On September 17, 2010, in the Superior Court of Fulton County, State of Georgia, Plaintiff, Sarah Ann Losapio (the "Named Plaintiff"), filed a purported Class Action Complaint (the "Complaint") styled Sarah Ann Losapio, Individually, and on behalf of a class of all others similarly situated v. Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Communications Holding, Inc., Comcast Cable Holdings, LLC, and Comcast Cable Communications Management, LLC, Case No. Case No. 2010CV191107 (the "State Court Action").

2. On September 23, 2010, the Named Plaintiff served Comcast with a copy of the Summons and Complaint in the State Court Action.

3. True and correct copies of the Summons, Complaint, Case Initiation Form, Service of Process Transmittal, and Affidavits of Service, which constitute "all process, pleadings, and orders served upon" Comcast in the State Court Action, 28 U.S.C. § 1446(b), are attached hereto as **Composite Exhibit A.**

[1] Comcast reserves all defenses in this action. This filing is for the sole purpose of removal and shall not be considered a submission to the personal jurisdiction of this Court, or the waiver of any other legal rights or defenses.

4. Pursuant to 28 U.S.C. §§ 1446(a) and (d), undersigned counsel certifies that a Notice of Filing Notice of Removal, along with a copy of this Notice of Removal and all attachments hereto, will be promptly filed with the Clerk of the Superior Court of Fulton County, State of Georgia, and the same will be promptly served on counsel of record.

5. The Named Plaintiff alleges that she is a resident of the State of Georgia and a Comcast High Speed Internet Subscriber. Compl. ¶ 5.

6. The Named Plaintiff's claims rest principally on the allegation that "Comcast disclosed private data regarding Comcast High Speed Internet subscribers available to law enforcement without the subscribers' knowledge or authorization and without proper compliance with the compelled disclosure provisions of the SCA [Stored Communications Act] and Wiretap Act." Compl. ¶ 2.

7. The Named Plaintiff asserts claims against Comcast for (i) violation of the Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (the "SCA"); (ii) violation of the Wiretap Act, 18 U.S.C. § 2510 *et seq.*; (iii) breach of contract; and (iv) breach of implied duty of good faith and fair dealing. Compl. ¶¶ 38-88.

8. The Named Plaintiff seeks to litigate her claims on behalf of herself and a proposed nationwide class, the existence of which is expressly denied,

defined as "all persons in the United States, who are or were High Speed Internet subscribers of Comcast and have had private data or information regarding their Comcast accounts made available to law enforcement, without proper compliance with the compelled disclosure provisions of the SCA and Wiretap Act and in violation of the [sic] Comcast's agreement with its subscribers set forth in the Comcast Privacy Notice, at any time from January 1, 2006, to the present (the 'Class')." Compl. ¶ 26.

9. The Named Plaintiff seeks (i) an order certifying this action as a class action with respect to the Named Plaintiff's claims for damages and other relief and appointing her and her counsel of record to represent the proposed class; (ii) actual damages, statutory damages and punitive damages, and declaratory and injunctive relief; (iii) reasonable attorneys' fees and costs; and (iv) "[a]ll such other and further relief allowed by law and as the Court deems just and proper." Compl. ¶¶ 2, 56-59, 68-71, 77, 87 and Prayer for Relief, pp. 16-17.

10. In particular, the Named Plaintiff alleges that she, "on behalf of herself and the class, is entitled to recover monetary damages including actual damages, and statutory damages in the amount of not less than $10,000.00 per class member as provided by 18 U.S.C. §2520(c)(2) [the Wiretap Act]." Compl. ¶ 71.

11. As demonstrated below, this Court has jurisdiction over the Named Plaintiff's claims and the Complaint is properly removed to this Court.

II. COMCAST HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

12. Plaintiff filed the Complaint against Comcast on September 17, 2010.

13. Plaintiff served Comcast with a copy of the Summons and Complaint on September 23, 2010.

14. This Notice of Removal is timely because it is filed within 30 days after Comcast was served with a copy of the Complaint. *See* 28 U.S.C. § 1446(b).

15. As of the date of this Notice of Removal, no defendant has filed a responsive pleading in the State Court Action. Comcast hereby reserves any and all rights to assert any and all defenses to the Complaint and further reserves the right to amend or supplement this Notice of Removal.

16. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States District Court for the Northern District of Georgia, because the State Court Action was filed within this District. The Superior Court for Fulton County, State of Georgia, is located within the Northern District of Georgia. Additionally, the Named Plaintiff alleges in the Complaint that venue is proper in Fulton County, Georgia. Compl. ¶ 16.

III. REMOVAL IS PROPER UNDER THE CLASS ACTION FAIRNESS ACT

17. The State Court Action is removable to this Court because federal diversity jurisdiction, 28 U.S.C. § 1332, exists over the Named Plaintiff's claims pursuant to the Class Action Fairness Act ("CAFA"), codified in various sections of Title 28 of the United States Code, including 28 U.S.C. §§ 1332(d), 1441(b), and 1453(b).

18. Congress enacted CAFA to expand substantially federal court jurisdiction over proposed class actions. S. Rep. No. 109-14, at *43, as reprinted in 2005 U.S.C.C.A.N. 3, *41, 109 S. Rpt. 14. Its provisions "should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." Id.

19. CAFA provides that a class action may be removed to federal court if: (1) the number of purported class members defined in the Complaint is not less than 100; (2) any member of a class of plaintiffs is a citizen of a state different from any defendant; and (3) the amount in controversy exceeds the sum or value of $5 million, exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2)(A), 1332(d)(5)(B) & 1453(b).

20. Further, "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds" the $5 million requirement. 28 U.S.C. § 1332(d)(6).

21. As set forth below, all of the requirements for removal under CAFA are satisfied here.

A. The Proposed Class Consists of More Than 100 Members

22. The Named Plaintiff alleges that she seeks to represent a nationwide class comprised of "all persons in the United States, who are or were High Speed Internet subscribers of Comcast and have had private data or information regarding their Comcast accounts made available to law enforcement, without proper compliance with the compelled disclosure provisions of the SCA and Wiretap Act and in violation of the [sic] Comcast's agreement with its subscribers set forth in the Comcast Privacy Notice, at any time from January 1, 2006, to the present (the 'Class')." Compl. ¶ 26. The Named Plaintiff further alleges "the Class contains many thousands of members" and that "[t]he members of the Class are so numerous that joinder of all members is impracticable." Compl. ¶ 27.

23. Accordingly, the Complaint itself alleges that the aggregate number of putative class members is greater than 100. 28 U.S.C. § 1332(d)(5)(B).

B. The Parties Are Minimally Diverse Under § 1332(d)(2)(A)

24. The Named Plaintiff alleges that she is a resident of the State of Georgia. Compl. ¶ 5. Based on that allegation, the Named Plaintiff is a citizen of the State of Georgia.

25. The Named Plaintiff alleges that Defendants are foreign corporations. Compl. ¶¶ 6-15.

26. Comcast Corporation is a Pennsylvania corporation that maintains its principal place of business in Pennsylvania. Declaration of Matthew Fradin, ¶ 3, attached hereto as **Exhibit B**. Thus, Comcast Corporation is a citizen of a different state than the Named Plaintiff.

27. Comcast Cable Communications, LLC is a Delaware limited liability company that maintains its principal place of business in Pennsylvania. **Ex. B** ¶ 4. Thus, Comcast Cable Communications, LLC, a citizen of Delaware and Pennsylvania, is a citizen of a different state than the Named Plaintiff. See 28 U.S.C. § 1332(d)(10) ("[A]n unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized."). Alternatively, if Comcast Cable Communications, LLC is not considered an "unincorporated association" under CAFA, 28 U.S.C. § 1332(d)(10), it is still a citizen of a different state than the Named Plaintiff. For

purposes of diversity jurisdiction, a limited liability company is a citizen of any state of which a member of the company is a citizen. See Rolling Greens MHP, L.P. v. Comcast SCH Holdings, LLC, 374 F.3d 1020, 1022 (11th Cir. 2004). Comcast Cable Communications, LLC has one member: Comcast Holdings Corporation, a Pennsylvania corporation that maintains its principal place of business in Pennsylvania. **Ex. B** ¶ 4. Thus, Comcast Cable Communications, LLC, a citizen of Pennsylvania, is a citizen of a different state than the Named Plaintiff.

28. Comcast Cable Communications Holdings, Inc., a Delaware corporation, was merged out of existence on August 31, 2009. **Ex. B** ¶ 5.

29. Comcast Cable Holdings, LLC is a Delaware limited liability company that maintains its principal place of business in Pennsylvania. **Ex. B** ¶ 6. Thus, Comcast Cable Holdings, LLC, a citizen of Delaware and Pennsylvania, is a citizen of a different state than the Named Plaintiff. See 28 U.S.C. § 1332(d)(10). Alternatively, even if Comcast Cable Holdings, LLC is not considered an "unincorporated association" under 28 U.S.C. § 1332(d)(10), it is still a citizen of a different state than the Named Plaintiff. Comcast Cable Holdings, LLC has a sole member: Comcast Cable Communications LLC, a Delaware limited liability company which has one member: Comcast Holdings Corporation, a Pennsylvania

corporation that maintains its principal place of business in Pennsylvania. **Ex. B ¶¶** 4, 6. Thus, Comcast Cable Holdings, LLC, a citizen of Pennsylvania, is a citizen of a different state than the Named Plaintiff. See Rolling Greens, 374 F.3d at 1022.

30. Comcast Cable Communications Management, LLC is a Delaware limited liability company that maintains its principal place of business in Pennsylvania. Thus, Comcast Cable Communications Management, LLC, a citizen of Delaware and Pennsylvania, is a citizen of a different state than the Named Plaintiff. See 28 U.S.C. § 1332(d)(10). Alternatively, if Comcast Cable Communications Management, LLC is not considered an "unincorporated association" under 28 U.S.C. § 1332(d)(10), it is still a citizen of a different state than the Named Plaintiff. Comcast Cable Communications Management, LLC has a sole member: Comcast Cable Communications LLC, a Delaware limited liability company which in turn has one member: Comcast Holdings Corporation, a Pennsylvania corporation that maintains its principal place of business in Pennsylvania. **Ex. B ¶¶** 4, 6, 7. Thus, Comcast Cable Communications Management, LLC, a citizen of Pennsylvania, is a citizen of a different state than the Named Plaintiff. See Rolling Greens, 374 F.3d at 1022.

31. Accordingly, none of the Defendants are citizens of the State of Georgia, and the parties to this action are diverse under 28 U.S.C. § 1332(d)(2)(A).

C. The Amount In Controversy Exceeds $5 Million

32. Although Comcast disputes liability and damages, it is evident that the Named Plaintiff purports to allege claims for herself and the proposed class for monetary relief that if granted would, in the aggregate, exceed CAFA's $5 million requirement.

33. The Named Plaintiff purports to represent a nationwide class comprised of "all persons in the United States, who are or were High Speed Internet subscribers of Comcast and have had private data or information regarding their Comcast accounts made available to law enforcement, without proper compliance with the compelled disclosure provisions of the SCA and Wiretap Act and in violation of the [sic] Comcast's agreement with its subscribers set forth in the Comcast Privacy Notice, at any time from January 1, 2006, to the present (the 'Class')." Compl. ¶ 26.

34. The Named Plaintiff alleges that, as of December 31, 2008, Comcast's cable systems served approximately 14.9 million high speed internet customers in 39 states and the District of Columbia. Compl. ¶ 17.

35. The Named Plaintiff further alleges that "the Class contains many thousands of members" and that "[t]he members of the Class are so numerous that joinder of all members is impracticable." Compl. ¶ 27 (emphasis supplied).

36. Between January 1, 2006 and September 1, 2010, Comcast disclosed to law enforcement private data or information concerning approximately 36,700 High Speed Internet subscribers nationwide. Declaration of Colin Padgett ¶ 3, attached hereto as **Exhibit C**.

37. The Named Plaintiff alleges that she and the putative class members are "entitled to recover monetary damages including actual damages, and statutory damages in the amount of not less than $10,000.00 per class member as provided by 18 U.S.C. §2520(c)(2) [the Wiretap Act]." Compl. ¶ 71 (emphasis supplied).

38. Thus, even if the putative class consisted of only one thousand members -- the Named Plaintiff in fact alleges, and Comcast's records show, that the putative class consists of many thousands of members -- the amount in controversy would be at least $10,000,000.

39. Accordingly, based on the facts set forth in this Notice of Removal and on the allegations of the Complaint, the amount in controversy in this case exceeds the sum of $5,000,000, exclusive of interest and costs. See Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744, 754 (11th Cir. 2010) (in determining the

amount in controversy on removal, "the court will consider first whether it is facially apparent from the complaint that the jurisdictional amount is in controversy. If it is not, the court may consider facts alleged in the notice of removal, judicial admissions made by the plaintiffs, non-sworn letters submitted to the court, or other summary judgment type evidence that may reveal that the amount in controversy is satisfied.") (citation omitted).

40. For all of the foregoing reasons, this action is properly removed to this Court pursuant to CAFA.

IV. REMOVAL IS ALSO PROPER BECAUSE THE NAMED PLAINTIFF'S COMPLAINT RAISES A FEDERAL QUESTION

41. Pursuant to 28 U.S.C. § 1331, District Courts have original "federal question" jurisdiction to hear all suits that arise under the laws of the United States. A civil action over which the District Court has original federal question jurisdiction is removable to federal court. See 28 U.S.C. § 1441(b).

42. It is apparent on the face of the Named Plaintiff's complaint that this Court has federal question jurisdiction over this matter. The Named Plaintiff's complaint alleges causes of action arising out of Comcast's alleged violation of the federal Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (Compl. ¶¶ 38-59) and the federal Wiretap Act, 18 U.S.C. § 2510 *et seq.* (Compl. ¶¶ 60-71).

43. The Named Plaintiff seeks, pursuant to the Stored Communications Act and the Wiretap Act, recovery of her alleged actual and statutory damages under these federal statutes. (Compl. ¶¶ 58, 71).

44. Therefore, the State Court action is also removable to this Court based upon federal question jurisdiction because the violations alleged and relief sought by the Named Plaintiff arise under federal law.

DATED: October 22, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LR 5.1

This is certifying that the foregoing pleading was prepared using Times New Roman 14 point in accordance with LR 5.1.

DATED: October 22, 2010

s/ Peter D. Coffman

Peter D. Coffman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22nd day of October, 2010, one true and exact copy of the foregoing Defendants' Notice of Removal was served by Federal Express to:

Joshua A. Millican, Esq.
Law Office of Joshua A. Millican, P.C.
44 Broad Street NW, Suite 607
Atlanta, Georgia 30303
Telephone: (310) 201-9150

s/ Peter D. Coffman
Peter D. Coffman, Esq.